

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK T. MURRAY,

Plaintiff,

v.

KRAIG NEWMAN, *et al.*,

Defendants.

Case No. C07-5215 RBL/KLS

ORDER DENYING PLAINTIFF'S
MOTION FOR SUBPOENA DUCES
TECUM

Presently before the court is Plaintiff's "motion for subpoena duces tecum, shortened time and supplement to Plaintiff's response to Defendant's motion for summary judgment." (Dkt. # 48). Also pending before the court is Defendant Newman's motion for summary judgment on the grounds of qualified immunity. (Dkt. # 40). Having carefully considered Plaintiff's motion and Defendant's opposition (Dkt. # 50), the court finds that Plaintiff's motion should be denied.

I. DISCUSSION

Defendant Newman's motion for summary judgment was filed on April 29, 2008 and noted for May 30, 2008. (Dkt. # 40). Plaintiff filed his response to the motion on May 28, 2008. (Dkt. # 45). Defendant Newman filed his reply on May 30, 2008. (Dkt. # 47). The matter is presently under consideration by the court.

On June 3, 2008, Plaintiff filed the present motion, seeking an order requiring the Defendant

1 to provide him with a copies of the proceedings of three criminal cases in Grays Harbor District
2 Court, including transcripts, 911 tapes and police reports. (Dkt. # 48). Plaintiff claims that these
3 materials would supply “additional proof of facts insofar as Judge Copland’s instruction for the
4 brothers to stay separate pending the resolution of the cases,” and “contradictions in the
5 complaining witness’ numerous statements would reveal that the defendants were well aware that
6 the reports were inaccurate.” *Id.*, pp. 1-2. Plaintiff requests that the subpoenas issue in the event
7 additional proof is needed to show that Defendant Newman made false statements in swearing to
8 the finding of probable cause or, alternatively, that the court deny Defendant’s motion for summary
9 judgment. *Id.* p. 3.

10 Plaintiff’s motion is not timely. Defendant Newman’s motion has been filed and noted for
11 hearing since April 29, 2008. (Dkt. # 40). Plaintiff filed a response and Defendant Newman filed a
12 reply. (Dkts. # 46 and 47). Plaintiff did not file a motion to continue the summary judgment
13 motion to conduct discovery. Nor has Plaintiff provided an explanation of why he did not
14 previously pursue discovery from Defendant or any third parties in possession of any materials he
15 may have thought relevant to the issues in his case. Notwithstanding Plaintiff’s *in forma pauperis*
16 status, he is responsible for prosecuting his case and the rules of discovery contained in the Federal
17 Rules of Civil Procedure provide various avenues for acquiring discovery during the course of
18 litigation.

19 More importantly, Plaintiff fails to explain to the court how discovery of proceedings in
20 three criminal cases, 911 tapes and police reports is relevant to the issue of whether Defendant
21 Newman is entitled to qualified immunity. That issue includes a determination of whether
22 Defendant Newman deliberately or recklessly made false statements or omissions that were material
23 to the finding of probable cause when he signed a declaration stating that a criminal complaint had
24 been filed against the Plaintiff and asserted that probable cause existed for issuance of a warrant for
25 Plaintiff’s arrest based upon facts furnished to him by the Grays Harbor County Sheriff’s Office.

1 (Dkt. # 9, Attach. 1, Exh. 2. That declaration stated, in pertinent part:

2 A Criminal Complaint was filed accusing the defendant of a criminal offense,
3 and probable cause exists for the issuance of a warrant of arrest for the above-named
4 defendant based upon the following facts which have been furnished by the Grays
Harbor County Sheriff's Office:

5 On August 28th, 2004, Grays Harbor Sheriff's deputies were called to a
6 potential domestic assault. When they arrived they were informed by Christopher
7 Murray that his brother, Mark T. Murray, the defendant, had just assaulted him. Mr.
8 C. Murray stated that his brother, in an effort to drive him from the residence, struck
him with a collapsible baton-style weapon twice in the back. The deputies observed
two red marks that they believed were consistent with injuries that would be caused
by such a weapon.

9 *Id.*

10 Plaintiff alleges that Defendant Newman was acting as a complaining witnesses and that
11 "the defendant[s] swear to the judge of knowingly false statements insofar as the address of the
12 neighbor and complaining witness and that the baton found was a Grays Harbor County Sheriff's
13 baton." (Dkt. # 28, p. 1). Plaintiff offers no explanation of how the proceedings in the criminal
14 cases are relevant to his claims of the false statements contained in Defendant Newman's
15 declaration.

16 Accordingly, it is **ORDERED** that Plaintiff's motion for subpoena (Dkt. # 48) is **DENIED**.

17 DATED this 24th day of June, 2008.
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23 Karen L. Strombom
24 United States Magistrate Judge
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